

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

DATE: September 23, 2008

**JUDGE
LEONARD DAVIS**

**COURT REPORTER
SHEA SLOAN**

LAW CLERKS: Andrea Houston, Matt Acosta

MASS ENGINEERED DESIGN, ET AL. vs ERGOTRON, INC., ET AL.	2:06 CV 272 PATENT CASE MOTION HEARING DOCKET #366 - MOTION TO COMPEL
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ATTORNEYS FOR PLAINTIFFS	ATTORNEYS FOR DEFENDANT
Max Tribble (Susman Godfrey) Justin Nelson (Susman Godfrey) Charlie Ainsworth (Parker Bunt) Chris Bunt (Parker Bunt) Gregory Maag (Conley Rose)	Lora Friedemann (Fredrikson & Bryon) Eric Findlay (Ramey & Flock)

On this day, came the parties by their attorneys and the following proceedings were had:

OPEN: 10:10 am	ADJOURN: 11:30 am
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TIME:	MINUTES:
10:10am	Case called. Mr. Tribble, Mr. Nelson, Mr. Bunt, Ms. Race, Ms. DeRieux & Mr. Ainsworth announced ready for plaintiff. Mr. Findlay & Ms. Friedemann announced ready for Ergotron.
	Ms. Friedemann presented Defendant's Motion to Compel, Dkt #366.
	Mr. Nelson responded to the motion. Ms. Friedemann responded as to meeting with Mr. Waraksa. Court addressed Ms. Friedemann. Ms. Friedemann continued her response.
	Mr. Nelson responded as to meeting with Mr. Waraksa and tendered document to Court. Mr. Nelson tendered to the court a motion.

DAVID J. MALAND, CLERK

FILED: 9.23.2008

BY: *Rosa L. Ferguson*, Courtroom Deputy

TIME:	MINUTES:
	Ms. Friedemann responded as to their meeting with Mr. Waraksa and the divisional application.
	Mr. Nelson responded as to transcript (reading from Page 51).
	Ms. Friedemann responded as to the deposition transcript. Ms. Friedemann addressed the Court on remedy. Mr. Nelson responded.
	Court finds no sanctionable conduct on behalf of plaintiff. Mr. Nelson believes there is a violation of the privilege and seeks no sanctions and asks that testimony be stricken and will plan to file as a response on 10/6. Mr. Nelson indicated Part 4A in the motion for inequitable conduct and summary judgment.
	Ms. Friedemann addressed the Court on whether to recognize a privilege with communications with patent agents. Ms. Friedemann tendered omitted part of exhibit (page 8 of deposition) to the Court. Mr. Nelson responded as to whether Mr. Waraksa was hired to prosecute both patents. Mr. Nelson tendered to the Court a document (Mr. Moscovitch reissued application – Exhibit 1 of this motion).
	Ms. Friedemann responded. Court inquired as to authority on the issue of communication of a U.S. attorney. Ms. Friedemann responded.
	Mr. Nelson responded as to Mr. Waraksa's dual role of attorney and agent. Court asked for background on Mr. Waraksa's relationship to client, Mr. Moscovitch. Mr. Nelson responded. Mr. Nelson tendered to Court Judge Ward's opinion on a similar issue. Court asked Ms. Friedemann to respond to Judge Ward's opinion. Ms. Friedemann responded. Mr. Nelson responded as to foreign patent agents.
	Ms. Friedemann responded as to Mr. Moscovitch's testimony. Mr. Nelson responded.
	Court addressed the parties and finds that Waraksa was acting as both atty and patent agent for the plaintiff and denies as to point 2.
	Ms. Friedemann presented point 3 of the motion. Mr. Nelson did produce all documents. Court ask to narrow down document to be reviewed <i>in camera</i> . Ms. Friedemann addressed the court as to documents as to the negligence claim, there are a lot of documents, but prepared to list them 1 by 1. Mr. Nelson responded as to document failing within the scope of waiver. Court will look at the 11 documents that have been produced. Court denies 3 rd point.
	Ms. Friedemann asked to make a comment a to Exhibits A, D, H & J and are not intended to be privileged. Mr. Nelson responded as to the "drafts".
	Court will get parties a ruling.
	Court inquired of parties as to where the parties are on mediation. Mr. Tribble responded. Ms. Friedemann responded as to mediation. Court ordered parties to get back to mediation by October 15. Court inquired as to trying the case. Mr. Tribble responded as to Dell's counterclaim and anticipates a 6 or 7 days (or 20 hours per side), if Dell counterclaim is tried together. Ms. Friedemann anticipates a 2 week trial, including all defendants and the counterclaims.
	Court inquired of trying case in Tyler. Mr. Tribble indicates his client prefers Marshall.
11:30 am	There being nothing further, Court adjourned.